

Principles of Child Development and Juvenile Justice

Information for Decision-Makers

Judges, prosecutors, and public defenders in juvenile delinquency court routinely encounter offenders of both sexes who are psychologically very different from their adult counterparts. Thus, an understanding of the principles of child and adolescent development and a consideration of children's mental health are useful to decision-makers at all levels of the juvenile justice system. Indeed, knowledge of the basic principles of developmental psychology is essential to understanding the requirements of normal neurobiological, psychological, social, and moral development.¹ Yet judges and attorneys can and do serve in delinquency court with little or no training in principles of normal—let alone abnormal—childhood development.

Unfortunately, inappropriate juvenile court sanctions based on the decision-makers' ignorance of child development principles can have negative developmental consequences that frustrate the very purpose of the juvenile court.² Simply put, there is the very real risk that the justice system can do more harm than good to a child who is still in the process of neurobiological, psychological, social, and moral development. And the negative consequences of careless sanctioning may last longer for a child (and for society) than they might for an adult. Thus, decision-makers at all levels of the juvenile justice system would benefit from considering children's mental health informed by the principles of child and adolescent development.

Other than infancy, no stage in human development results in such rapid or dramatic change as adolescence.³ Adolescence is an intense period of rapid development culminating in identity formation⁴ and social integration. These developmental tasks are keenly sensitive to environmental (peer, educational, familial, and social) influence. The teen years are also characterized by a struggle for autonomy from adults, upon whom adolescents nonetheless depend. Rapid neurobiological concomitants accompany these changes and are reflected in cognitive, emotional, and abstract reasoning, as well as changes in moral development.⁵ According to some authorities, adolescence is an "important formative period in which many developmental trajectories become firmly established and increasingly difficult to alter."⁶

Applying the child development considerations discussed in this article to juvenile court decisions should lead to lower detention rates and durations and to less frequent use of interventions whose success is not supported by

DAVID E. ARREDONDO, M.D.

*Office of Child Development,
Neuropsychiatry, and Mental Health
www.childrensprogram.org*

The juvenile justice system exists to protect public safety, prevent youthful offending, and promote positive social development in children and adolescents. This article argues that, to accomplish these goals without harming both children and society, the system's decision-makers must avoid treating the children it faces simply as little adults. Children and adolescents are psychologically very different from adults and even from each other. Decision-makers must understand principles of child development and apply them to tailor developmentally appropriate sanctions. The article explains principles of child development and discusses the various ways children of different developmental stages experience the same sanction. It goes on to describe different sanctions and their effects on children, and then to urge decision-makers to tailor sanctions to

Continued on page 128

Continued from page 127

each offender's individual developmental, emotional, and social circumstances. The article concludes by suggesting sanctioning strategies for special juvenile offender populations: girls, the mentally ill, and transgenerationally involved youth.

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evidence. These changes will be most pronounced for children with mental disorders or mental retardation and for low- to moderate-level youthful offenders of all genders, races, and ethnicities. The purpose of this article is to help lawyers, judges, and other juvenile justice policymakers and decision-makers prescribe more appropriate, effective, and humane remedies when designing alternative interventions and sanctions for juvenile offenders who are not seriously violent or sociopathic. Because the vast majority of youthful offenders are not dangerous, this group is the focus of this article. And, although they are extremely important, this article does not directly address issues of diminished competence, capacity, and culpability.⁷

The article is organized in three major sections. The first section references principles of child and adolescent development and children's mental health and discusses how they affect social behavior. The second section explains the overarching goals of the juvenile justice system and offers examples demonstrating that certain sanctions are more conducive to a child's positive social development than others. It describes the necessary balance between allowing some latitude for mistakes while providing a clear set of limits and consequences. The section also discusses the inappropriate imposition of particular sanctions and their possible deleterious effects on a child's relationship to society. It notes especially that children of different maturational stages may experience the same sanction differently. The section concludes by proposing more effective sanctioning methods for healthy child development. It argues that decision-makers in the juvenile justice system should focus primarily on the developmental, emotional, and social needs of the *offender*, rather than on the characteristics of the *offense*; in other words, the system should be offender-driven rather than offense-driven. The goal of this approach is to help the decision-maker conceive more clearly the objectives to be attained and to become more knowledgeable and effective in achieving those objectives.

The last section suggests specific sanctioning strategies for various special cases, including those of girls in the juvenile system, incarcerated juveniles with mental health and neurodevelopmental problems (including learning disabilities), disproportionate minority confinement from a child's perspective, and transgenerational offenders and their families.⁸

GENERAL DEVELOPMENTAL CONSIDERATIONS

Both biology and experience determine a child's developmental trajectory. Modern neurobiological understanding of the interdependence and interpenetration of these two dimensions has superseded the historical question of "nature versus nurture." A child's experience affects his or her brain development, and the level of brain development affects how the child experiences his or her environment and processes information.⁹ This mutual causation means that future behaviors in response to a given set of environmental circumstances, cues, or stimuli can be traced to genetic and biological factors

(temperament, biological predilection, vulnerability), as well as other experiences (internal, familial, interpersonal, environmental). Insofar as social behavior is a principal concern of the juvenile justice system, that system should focus on familial and social factors that affect behavior. In this context, social learning theory¹⁰ and developmental neurobiology¹¹ are both relevant for framing issues that inform effective sanctioning of children and adolescents.¹²

Research in developmental neurobiology using magnetic resonance imaging of the brain has demonstrated differences in the way adolescents and adults think and feel and the way they process information before they act. Adolescents tend to process emotionally charged decisions in the limbic system, the part of the brain charged with instinctive (and often impulsive) reactions. Most adults use more of their frontal cortex, the part of the brain responsible for reasoned and thoughtful responses.¹³ This is one reason why adolescents tend to be more intensely emotional, impulsive, and willing to take risks than their adult counterparts. In addition to the large differences between adolescents and adults in the degree to which the frontal cortex is used, there is a large amount of within-group variation among adolescents themselves, such that chronological age is a poor index of neurobiological and emotional maturity.

On the social front, youth who repeatedly appear before the juvenile court typically come from chaotic homes and neighborhoods. These youth have learned that the world can be unpredictable, capricious, threatening, and grossly unfair. Additionally, they have not had the necessary developmental opportunity to internalize consistently benevolent, reliable, and fair adult authority figures. Instead, hostile environments that were not responsive to their need for consistent and reliable caregiving may have determined these young offenders' views of family, neighborhood, and society.¹⁴

Though this does not diminish offenders' responsibility for learning to control their behaviors, it illustrates why it is important for the delinquency court to avoid reenacting the role of an indifferent,

unreliable, unpredictable, unfair, or incompetent authority figure. Children and adolescents need limits, structure, and boundaries to develop normally.¹⁵ From a developmental perspective, interaction with the juvenile justice system is a key opportunity for society to demonstrate its values¹⁶ and to articulate its expectations of its members. To developing youth just beginning to learn what they can expect from social authority, the juvenile justice system represents the social order. If the authority (law enforcement and delinquency court) seems thoughtless, impersonal, or indifferent, youth will experience precisely the opposite of the timely, consistent, and thoughtful responses they need to developmentally internalize personal responsibility for their actions. What vulnerable youth experience from the juvenile justice system will affect how they view authority in general and their beliefs about social authority in particular.

Although children have a developmental need to test limits, they also have an equally important need to encounter predictable structure and boundaries. A balance between punishment and permissiveness—both measured and timely—is essential for effectively intervening with the low- to moderate-level offender, the responsibility for whom has fallen to the legal system.

From a developmental perspective, the predictability and consistency of adult attention and responsiveness are often what is most important. If children learn that their social environment responds inconsistently, they are much more likely to continue behavior in the hope that they will “get away with it this time.” For example, if a child is caught sniffing glue after breaking into a neighbor's house while truant from school and “nothing really happens,” he is more likely to persist in those behaviors and perhaps even escalate the seriousness of his substance abuse, truancy, and delinquency. The message he has received is: “No one really cares about me that much,” which is construed to mean, “So I might as well do whatever I want.”

One reason for this response is that children require attention for brain development just as they require food or sleep. The notion of an attention

requirement or demand has been relatively unrecognized in Western psychology, although it has been known for some time in the psychologies of central Asia.¹⁷ This attention-seeking behavior has its correlates in brain development inasmuch as the developing child requires interaction with other humans to develop the capacity of recognizing facial cues and the nuances of social situations. Teenagers who are attention-deprived are not very discriminating about how they go about getting the attention they need. Children will seek both positive and negative attention to meet their needs. This is the root of much of attention-seeking behavior in normal adolescents; it accounts for some of their more peculiar vagaries in dress, appearance, and behavior.¹⁸ If no attention is forthcoming, they will escalate their demands. For example, if a child is not noticed when he uses mild profanity, he may "raise the stakes" by using more vulgar language to get the attention he needs (and to test his social boundaries). Another example is verbal taunting. If no one intervenes, taunting by an attention-seeking child often escalates into full-scale bullying and sometimes into physical violence.¹⁹ It does not matter to the child what the valence of the attention is; failing to get positive attention, a child will attract negative attention.

STRATEGIC SANCTIONING

Muddled thinking and significant differences of opinion exist today regarding the proper role of the delinquency system.²⁰ The historical polarization of advocates of punishment and those who advocate "rehabilitation" is, for the most part, irrational. As any parent can testify, successfully raising a child requires at least some negative consequences (i.e., punishment) in response to dangerous, antisocial, or otherwise inappropriate behaviors.²¹ Complications arise when youth confuse punishment (to discourage misbehavior) with retribution. Further complications develop when punishment is applied thoughtlessly, unfairly, and disproportionately in a manner that does not foster positive development. Worse yet, it may forestall it.²² Finally, the frequent pres-

ence of biologically based mental illness or mental retardation in a substantial subpopulation of juvenile offenders further confounds effective decision making. Thus, effective sanctioning of juvenile offenders requires clarity of thought and purpose.

The modern decision- and policymaker in the juvenile justice system must first be clear about what sanctioning the offender needs to accomplish.²³ Three important, overlapping goals of the juvenile delinquency system for low- to moderate-level offenders are punishment, prevention of recidivism (to provide for community safety), and deterrence (of other youth from committing the same offense). Another goal, which is often conceptually mixed with these three, is rehabilitation—a term that has effectively lost useful, precise meaning because of its vague definition in popular usage,²⁴ the political associations it acquired through heavy usage over time,²⁵ and its use as a euphemism to denote intermediate sanctions designed to effect one or more of the other goals of the juvenile justice system. For example, a two-year incarceration of a 14-year-old in a state "training" school is often called "rehabilitation." *Black's Law Dictionary* defines *rehabilitation* in the context of criminal law as "the process of seeking to improve a criminal's character and outlook so that he or she can function in society without committing other crimes."²⁶

Problems arise when this definition of *rehabilitation* is applied to children and adolescents. The rehabilitative process is open to widely different interpretations depending on the philosophy of the decision-maker. For example, prolonged detention of a moderate-level offender is thought by some decision-makers to be rehabilitative because it may improve the offender's character. Yet modern psychology and psychiatry specifically dispute that a child or adolescent has a fully formed character. For example, a child cannot be diagnosed with an antisocial personality disorder before 18 years of age.²⁷ In other words, the character of the child and adolescent is still in the process of forming. Evidence exists that incarceration, boot camps,²⁸ and the fear of being "scared straight"²⁹ do nothing to improve

the characters of juvenile delinquents, even though all are commonly cited as rehabilitative elements of the juvenile justice system.

If the term is to be used at all, *rehabilitation*—at least in the context of the low-level juvenile offender—should be defined as “the goal of fostering positive social development (healthy personal, social, and moral maturation) of youth.”³⁰

Stated in this way, the goal of rehabilitation is broader than punishing, controlling, or deterring behavior, but it does include the more narrow aim of controlling and delivering consequences that will serve as deterrents to delinquent behaviors, and that will provide for community safety. Given the confusion that currently surrounds the primary purpose of juvenile court law, it is imperative that the reader understand that these goals (positive development versus behavior control/punishment) are *not* in opposition to each other but, rather, are interdependent. This article describes the interdependence between the two goals and explains how an appreciation of the principles of healthy childhood development has a direct bearing on the design of effective sanctions and deterrents for the vast majority of juvenile offenders.

DURATION OF SANCTIONING AND FREQUENCY OF REVIEWS

Many variables play roles in determining effective offender-based sanctioning. Generalization is therefore difficult and risks contradiction in an article advocating individualized decision making. Nevertheless, this article will address two primary components of effective sanctioning: duration of sanctioning and frequency of review. Developmentally appropriate offender-based sanctions usually vary along these dimensions.

The reason that a year seems interminably long for a 4-year-old is that a year is, subjectively, one-fourth of his life. For a 60-year-old man, a year is only one-sixtieth of his life. This subjective perspective is why the years seem to go by more quickly as we get older. The reason this principle is important to understand in the context of sanctions is twofold. First, it has a

direct bearing on the effects of delaying the onset of sanctions vis-à-vis the behavior for which they are to serve as punishment or deterrent. The younger the child, the more quickly the consequences must follow the behavior in order to be effective. Second, the perspective has a direct bearing on setting developmentally appropriate durations of sanctions. It is therefore imperative that decision-makers remember that the younger the child, the longer a given duration of sanction will be subjectively experienced. This is especially important when detention is used. If the duration is too long, the child will invariably feel that the punishment could not possibly match the crime. There is the risk of losing this child, who will externalize his responsibility (e.g., blame his or her lawyer) and feel (consciously or not) that societal authority is capricious and unfair. Patricia Chamberlain aptly describes the roots of this feeling:

Another salient characteristic of adolescents with severe conduct problems is that they invariably have a strong sense that they have been treated unfairly. Whether it has been by their parents, the police, or their teachers, each of them feels victimized in some way. Of course, there are good reasons for this. After reading the case histories of these children, one cannot help but feel sympathetic to their plight. Many of them were raised in families in which there have been serious mental health problems for generations and legacies of abuse, crime, and disrupted relationships have been passed down as part of the family tradition. Attempting to change the life course of these adolescents while treating them in a way they see as fair is a formidable challenge.... That is, an individual will act out in destructive ways to the extent that he or she feels treated unfairly.³¹

If efficacy in sanctioning is the goal, the foremost considerations in tailoring the variables of duration of sanction and frequency of monitoring should be the developmental stage and psychological circumstances of the child. As discussed above, younger children will subjectively experience any given duration of sanction as longer because of how they experience time. In practical terms, this means that three months for a 14-year-old is subjectively much longer

than three months for an adult. This is why effective parents ground their children for weeks, not months, at a time. Imposing a sanction longer than a few days or weeks on a younger child does not usually add anything to deterrence. It is also more difficult to enforce and is more likely to be perceived as grossly unreasonable and unfair, further mitigating the effectiveness of the sanction.³²

Developmentally appropriate *frequency of review*, however, is the other side of this coin. Because younger children experience time as moving more slowly, frequent reviews of their behavior are highly desirable, even necessary. Older children and adolescents do not require such frequent monitoring. Effective parents monitor homework, chores, curfews, and bedtimes daily or weekly until they are assured that the child can monitor these responsibilities on his or her own. Effective therapeutic residential centers or group homes also monitor behaviors on a daily or weekly basis and reward or punish accordingly. Consequences for misbehaviors are sure, consistent, quick, and directly tied to the undesired behavior. On the other hand, the child gets a fresh start with every new day or week.

To be effective in promoting positive development and extinguishing negative behaviors, the juvenile justice system must adopt the same consciousness of developmental appropriateness: as a general rule, the younger the child, the shorter the duration of sanction but the greater the frequency of monitoring. For example, in residential treatment, a youth is not asked to stay in control "forever." Experience has taught that "one day at a time" works much better. Similarly, frequent reviews give the child support and an excuse to say no to peer pressure. Another example is review of compliance with court orders. It is unreasonable to reprimand a child six months after he or she has stopped complying with an order. The original offense, the rationale for the court order, and the warning and admonitions delivered by the judge have long since faded from the child's memory. The judge has a record to review; the child does not. If goals (for example, school attendance and performance) have been set, progress toward those

goals should be monitored frequently to make sure the child is on track. To be fair and effective with young people, the juvenile justice system must strive to mark time in accordance with the needs of individual youth at different stages of maturation and not based on a fixed and preset timetable determined by convenience or usual and customary practice. In general, this means that the juvenile justice system must conduct more frequent reviews. In addition, each child would ideally have one judge; in practice, this would mandate a less-frequent rotation of judges.³³

COMMUNITY-BASED SANCTIONS ARE BETTER THAN INSTITUTIONAL ALTERNATIVES

Although acknowledging one's personal responsibility for an action is often difficult, the youth must accept responsibility for his or her delinquent behaviors. This step corresponds to the developmental goal of encouraging children to control their impulses, to consider the impact of their behaviors on others, and to accept responsibility for their own mistakes without blaming them on others or on circumstance. For a youth who has not yet become desensitized to the threat or imposition of detention, the initial impact of incarceration will be profound. At the same time, the impact of this sanction diminishes dramatically over time as the child becomes desensitized. At a certain point, the child begins to "identify" with some of the more delinquent peers in detention.³⁴ For most teenagers, losing a Friday and a Saturday night to a curfew is sufficient to get their attention and to serve as an effective sanction.³⁵ Paradoxically, months of detention are often counterproductive and can have seriously undesirable side effects, such as gang recruitment. Judges report a frequent refrain from parents that "my child never even *thought* of doing *that* until he was locked up with those other children."

From a developmental point of view, prolonged detention is also problematic because the child is undergoing developmentally important phases of life in an institutional setting with idiosyncratic demands particular to that setting. Consequently, the child is

adapting to incarceration and an institution, not to the community from which she came and to which she will return. It is imperative that the juvenile justice decision-maker understand that virtually *every effective evidence-based intervention for delinquency occurs in the home and community*. One expert states it simply:

It seems unlikely that institutional treatment, retraining or punishment is effective in decreasing delinquency. It is even possible that there is a harmful effect because of the alienation, stigmatization and “contamination” suffered by those who are incarcerated together with other offenders. Even where treatment gains are observed, it appears that they are lost on return to the community.³⁶

This finding makes perfect sense. Normal child and adolescent development requires an environment that is more, not less, normalized.³⁷ This is one reason why boot camps do not work for the great majority of offenders and may, in fact, worsen their behavior.³⁸

THE PROPORTIONALITY OF SANCTIONS

The developmentally appropriate intensity of sanctions is also very difficult to address with generalizations, for several reasons. First, there are cultural differences in what is considered a reasonable way to treat a child. Not long ago, many Americans believed corporal punishment was a sanction of choice, hence the popular saying “Spare the rod and spoil the child.” Second, individuals experience sanctions differently from one another. For some children, just the thought of detention is terrifying, while for others, a stint in “juvie” is a badge of honor: in fact, home detention or being alone on the weekends is a fate far worse than juvenile hall, where their friends are.³⁹ Third, depending on the degree to which a child has become inured to the system, a given sanction may appear more or less fair to that child and his family. For example, the family of a girl who is in detention for running away, drinking, and intimately associating with older males in stolen cars might

be relieved or, depending on the context, might feel that she is being discriminated against on the basis of her gender.⁴⁰

Inasmuch as the child’s and family’s experience with the court is *itself* a determinant of future attitudes toward social authority, it is imperative that the court be predictably knowledgeable and reasonable in designing sanctions that are offender-based. This requires an understanding of the individual child, as well as his or her family, culture, and social circumstances.

DEVELOPMENTALLY CONSTRUCTIVE SANCTIONS

As many parents and teachers know, designing constructive sanctions is challenging but very worthwhile because it multiplies the developmental, educational, or social yield. Children become more mature, responsible, knowledgeable, or prosocial as a result of their punishment. This is why researching and writing a report on the effects of substance abuse is better than writing “I will not smoke marijuana” a thousand times. Volunteer service at a senior care home is better for a child than picking up highway litter (unless the offense is littering). A youth convicted of driving while intoxicated might be ordered to volunteer in an emergency room. A particularly good example of a constructive sanction for graffiti vandals is ordering them to adopt a piece of property and holding them strictly responsible for maintaining it and keeping it graffiti-free.⁴¹ This type of individualized and nuanced sanction is developmentally constructive because the youth has a chance to experience the sensation of watching out for his assigned property. He learns what it feels like to be at the mercy of vandals and experiences the victimization of having his property vandalized. Furthermore, he learns the inconvenience, cost, time, and labor involved in cleaning up after somebody else who has little regard for the rights of others.

Another example is arranging for a youth to meet his victim. Adolescents, often thoughtless and impulsive, will commit a crime or prank without considering its impact on others. When a human face

is placed on the damage and suffering adolescents have caused, they often feel both regret and remorse. What most of these offenders lack is experience—not the capacity for empathy. Whether they admit it or not, a genuine desire to make things better often arises. The juvenile justice system should take every opportunity to present to youth the human face of victimization.⁴² From a developmental point of view, this is one of the most potent tools in the hands of decision-makers. It teaches empathy, accountability, and compassion while allowing the painful impact of guilt and shame to mold future behavior. It personalizes the system and humanizes society for the children whom the system is trying to socialize.⁴³

DEVELOPMENTALLY COMPETENT PRACTICE PRINCIPLES

The most effective sanctions are those that address the personal, familial, and societal variables that are essential to healthy child development. These sanctions are community-based whenever possible because, as discussed earlier, virtually every effective evidence-based intervention for delinquency occurs in the home and community. These sanctions almost invariably help the low- to moderate-level offender in developing increased personal competence and connectedness to prosocial elements of a larger community. The immediate community perceives them as measured and fair. Effective sanctions provide supervision, encouragement, and support, along with clear, firm, and timely consequences for delinquent behavior. Effective sanctions are also characterized by some of the following features:

1. They focus on the offender, not the offense.

- There is sensitivity to the developmental stage of the offender.
- Juveniles are dealt with in the context of their connectedness with others (parents, siblings, extended family, peers).
- Judicial and supervisory contact with the offender is frequent and reliable.
- Opportunities for the child to externalize responsibility for his or her acts are minimized.

2. They fortify extant strengths, competence, and self-control.

- The individual youth's strengths are identified and mobilized.
- There is recognition of the child's efforts; the child receives encouragement.
- Multiple aspects of the child's life are acknowledged (for example, sanctions may effect education, peer relations, vocational preparedness, and prosocial community relatedness).
- The child's commitment to appropriate education or vocational preparedness is vigorously promoted.
- The youth is given meaningful opportunities to enhance the development of personal competence.

3. They are community-based rather than institutional, building on relationships with the child's family and community whenever possible.

- Family, schools, peer group, and neighborhood risk and need factors are taken into account.
- There are meaningful opportunities to enhance the youth's connectedness to prosocial elements, e.g., neighborhood sports teams.
- Immediate and extended family and community members are used as allies.
- After-school hours are accounted for.
- Time with antisocial peers is minimized.
- The youth is exposed to positive peer environments.
- The youth has genuine opportunities to contribute to family, school, or a prosocial community.

4. They are realistic.

- Incentives to succeed are within the reach of the offender.
- Clear expectations are set, and monitoring is set at a developmentally appropriate frequency.
- There is recognition of the child's efforts; the child receives encouragement.

- There is a developmentally appropriate provision of latitude for mistakes.

5. They engender respect for the court and its processes.

- There is an implicit and explicit expectation of respect for the court.
- There is explicit respect for each youth and his or her family, culture, and community.
- Humiliation or shaming is not used as a means of motivation (for example, the child is shown respect).

6. They put a human face on the court process.

- The judge relates to each child personally.
- All parties explicitly communicate the message that “the system cares.”
- The child is encouraged to meet the victims of his or her criminal acts.
- Empathy for the victims, an apology, and individualized restitution are explicit expectations.

STRATEGIES FOR SPECIAL POPULATIONS

Within the juvenile population there are enormous differences in emotional development between, for instance, a 12-year-old and a 17-year-old. There are also vast differences among children of the same chronological age—for example, among 13-year-old boys. Understanding principles of child development and children’s mental health can help guide the design and implementation of more effective interventions for youth who have committed minor to moderately severe offenses. For example, there is evidence that earlier-maturing girls and later-maturing boys tend to have more problems than adolescents who experience puberty in the typical age range.⁴⁴ The National Research Council’s Forum on Adolescence reports that, compared to girls who physically mature later, early-maturing females are at increased risk for victimization (especially sexual assault), which may contribute to their greater likelihood of problem behaviors.⁴⁵ This section describes four such special populations to highlight the types

of developmental issues that professionals commonly encounter.

GIRLS

Girls make up an increasing proportion of the number of juveniles arrested.⁴⁶ The 1997 violent crime arrest rate for females was 85 percent higher than the 1987 rate.⁴⁷ No single theory for their increasing arrest rates is entirely satisfactory. As with juvenile crime in general, the causes of the increase are many and include developmental,⁴⁸ psychological,⁴⁹ post-traumatic,⁵⁰ sociological,⁵¹ and processing factors.⁵² Compared to boys, girls are (1) more often arrested and tried for status offenses such as running away and curfew violations,⁵³ (2) more likely to be the victims of trauma,⁵⁴ and (3) more affected by apparent increases in the rates of family violence observed in specialized juvenile domestic violence court calendars.⁵⁵ A tragic fact is that many girls run away as a response to family trauma—especially sexual victimization.⁵⁶ Clinical experience makes it clear that we are unlikely to hear about this victimization in usual court processing.⁵⁷ Most often, the trauma will be displayed by out-of-control behavior, substance abuse, running away, extreme promiscuity, and even prostitution.⁵⁸ According to the National Research Council’s Forum on Adolescence,

[t]here is some evidence that, on average, girls experience more distress during adolescence than boys. Some researchers have speculated that, for girls, the transition during puberty brings about greater vulnerability to other environmental stressors. In particular, a growing literature suggests that the early onset of puberty can have an adverse effect on girls’ development. It can affect their physical development (they tend to be shorter and heavier), their behavior (they may have higher rates of conduct disorders), and their emotional development (they tend to have lower self-esteem and higher rates of depression, eating disorders, and suicide). The youngest, most mature children are those at greatest risk for delinquency.⁵⁹

Among the juvenile population, girls are also disproportionately affected by affective (mood) disorders

such as major depression.⁶⁰ Because irritability and problems with impulse control are cardinal features of mood disorders,⁶¹ these symptoms often show up in female offenders.⁶² These circumstances create many difficulties for the decision-maker who may not have many gender-appropriate resources available as alternatives to traditional sanctions.⁶³ Punishment alone is not a good remedy for girls who are already self-destructive. And, from a child psychiatrist's point of view, self-punishment is one of the most difficult and intractable syndromes encountered in victims. It often occurs as an attempt at psychologically mastering an inflicted psychological wound that occurred when the victim was helpless or passive, as in the case with sexual abuse. In simple terms, a girl who has been seriously harmed is more likely to put herself in harm's way. Punishment by the justice system can, of course, exacerbate these self-destructive behaviors.

Another variable that sometimes compounds these problems is a girl's transgenerational involvement with the dependency or criminal system. For example, a girl's mother may have a history of involvement with the dependency court. If her mother has frequently been absent from her upbringing owing to the mother's involvement with the system, a girl is at higher risk for early pregnancy and subpar mothering of her own children. Thus, the stakes for the decision-maker are high; to be effective, he or she must take into account developmental, gender-specific, and mental health considerations to mitigate the potential risk to the girl and, potentially, to her children.⁶⁴

Although few gender-specific alternatives exist, juvenile justice professionals should look for programs that incorporate the following elements:

- teach girls how to build healthy relationships
- teach girls how to deal with emotional, physical, and sexual trauma
- address future risk of victimization
- provide for affect regulation to address the intense, rapid changes in mood that often characterize abused girls

- teach pregnancy prevention or prepare girls for motherhood
- base their programs in the community whenever possible

MENTALLY ILL AND RETARDED JUVENILE OFFENDERS

The juvenile justice system has become a dumping ground for emotionally disturbed juveniles with nowhere else to go.⁶⁵ Thus, decision-makers commonly face children with mental illness and mental retardation. In a recent survey, 86 percent of juvenile and family court judges said they believed that "mentally-ill juveniles were being shunted into the delinquency system."⁶⁶ Seventy percent of judges believed that at least 15 percent of defendants were "mildly or moderately mentally retarded."⁶⁷ Conservative estimates suggest that 20 percent of juvenile detainees have serious biological and genetic mental illnesses.⁶⁸ The rates of less-serious but equally debilitating illness (including posttraumatic stress reactions) are considerably higher—especially in girls.⁶⁹ Although the prevalence of mild and moderate mental retardation is unknown, the author's observation of one specialized court suggests it is very high.⁷⁰ The presence of a serious mental disability has a direct bearing on the imposition of appropriate sanctions (for example, boot camps are contraindicated during serious clinical depression), the use of juvenile beds,⁷¹ and the development of treatment alternatives.⁷² Indeed, 77 percent of juvenile and family court judges said that, given better treatment options, detention rates could be reduced.⁷³ As a practical matter, these better treatment options would be community-based sanctions that strengthen the family, bolster educational performance or vocational preparedness, and address accountability and victim restitution.

Most important, serious mental disability raises serious issues about diminished competence, fairness, and humaneness. Cognitively limited youth often are already taken advantage of by more intelligent yet antisocial youth; it would be even crueler to incarcerate them merely because they are delusional

or hallucinating. The sequelae of criminalizing the child with mental illness are clinically unacceptable. From a medical point of view, they are a violation of a fundamental ethical precept *primum non nocere*—"first do no harm."

With respect to mental illness, an effective juvenile justice system would have the following characteristics:

- aggressively identifies mental health issues by, for example, screening all youth
- seeks appropriate mental health and mental retardation expertise for diagnosis or assessment⁷⁴
- provides treatment in lieu of institutionalization, boot camps, or incarceration for children with serious mental illness
- separates children with mental retardation from their peers with normal intelligence

MINORITY YOUTH

The proportion of minority youth in the juvenile justice system greatly exceeds the proportion of these youth in the general juvenile population.⁷⁵ This disproportionate representation extends to virtually all phases of the delinquency process and intensifies as minority youth become more deeply involved in the juvenile justice system.⁷⁶ This situation continues to worsen despite increased public awareness and efforts to combat it.⁷⁷

There are myriad causes and conditions from which these circumstances arise. Developmental psychologists, parents (of all ethnicities), and concerned citizens view the situation as unacceptable because the very children to whom our society is trying to teach the value of justice perceive our society as grossly unjust. Although minority children are obviously the most deleteriously affected, their plight is not lost on their nonminority peers. The unfairness of "the system" toward people of color has become a widely accepted fact among young people. Popular music and entertainment abound with "jokes" about racial profiling and the system's unequal treatment of minorities. From a child-development point of view, this severely undermines our children's moral

development and their respect for society and social authority. As these children age, their lack of respect turns into cynicism and is accompanied by the belief that injustice, not justice, is the lot of people of color in America. The societal impact of this cynicism on our social fabric is difficult to overestimate.

TRANSGENERATIONAL INVOLVEMENT

Another dimension to the problem of disproportionate minority confinement is the transgenerational involvement of children. Transgenerational involvement is a pattern in which multiple generations of a single family are involved in the justice system. Examples include a 13-year-old boy brought before the court while his father is still in prison or a 12-year-old girl who was taken from her mother by child protective services when she was 6 years old and is now charged with battering one of her foster parents. When encountering a young offender from this background, the decision-maker must carefully consider developmental issues because of the complex and interrelated dynamics between the child, parental authority, and social authority. Transgenerational involvement creates psychosocial dynamics that might lead to an escalation in antisocial reactions rather than to their abatement. A young child is likely to idealize his or her imprisoned parent and unambivalently harbor hatred of anyone whom they perceive to have hurt that parent. An older child is also likely to identify with parental figures, siblings, cousins, and others who have been sanctioned by society. Idealization, identification, empathy, and protectiveness are natural human filial attitudes, desirable and common to us all. From the point of view of the child to be sanctioned, however, they can create complex ambivalence. For example, a child who enters the system from a family with extensive transgenerational involvement may view the process as a rite of passage and a point of (unspoken) family pride. Consequently, careless system interventions may have paradoxical and undesired effects on that child, such as providing him with what he silently desires.

To the transgenerationally involved parental figure, sanctioning of his or her child can be perceived many different ways. Some parents may be indifferent. Others may view the intervention as unwelcome and unfair (perhaps racist or sexist) harassment or be very fearful of involvement with social authority based on their previous personal experiences with that authority (for example, child protective and immigration services). Some parents, such as recovering alcoholics or drug addicts, may be relieved or grateful that someone is stepping in, in the hope that societal intervention will help their children turn their lives around and prevent the unnecessary suffering that they themselves have endured as a result of their addiction.

It is essential that the decision-maker understand the whole spectrum of parental attitudes, which may include mixtures of indifference, antipathy, fear, and hope. These attitudes are part of the context in which the child will perceive the sanction and are therefore a major determinant of its effectiveness or lack thereof.

The decision-maker must also examine his or her own attitudes and biases regarding the relationships of transgenerationally involved parents and children: Does the decision-maker believe (consciously or unconsciously) that criminality is genetically determined and that he or she is providing early detection and incapacitation of children destined to become criminals? Does he or she believe his or her job is to protect one part of society from another? Does he or she believe children should be taken away from criminal parents and neighborhoods to reduce the chance that the child will be raised to become a criminal?⁷⁸ Does he or she assume that parents will interpret his or her interventions as benevolent? Does he or she believe that setting an example with one child will serve as an effective deterrent to other siblings who are also at risk? Although a full discussion of these attitudes is beyond the scope of this article, the decision-maker must ensure that his or her attitude about the incorrigibility of the children of justice-involved parents does not lead to ineffective and inappropriately punitive law enforcement and sanctioning.

CONCLUSION

Primum non nocere—first do no harm—is not an ideal but the lowest threshold to which adequate performance is compared. Once public safety and victim rights have been accounted for, it is reasonable to apply this minimal standard to the juvenile justice system, which intervenes on behalf of the highest-risk, and oftentimes most highly victimized, youth. To meet this threshold, decision-makers need familiarity with the general principles of child development and a reasonable knowledge of the risks and needs presented by each individual offender. The juvenile justice system cannot do this alone.

For the majority of court jurisdictions, meaningful implementation of the principles outlined in this article requires an amount of time, thought, and expertise that far exceeds their current capacity. Many jurisdictions exhibit severe fragmentation of triage, assessment, and service delivery systems with poor communication, little mutual understanding, and often distrust between community agencies competing for the same public dollar. Nevertheless, the developmental principles outlined in this article can serve as a rationale for intense cross-disciplinary training, cooperation, and integrated treatment planning far beyond what currently exists. New models are needed in which departments of probation, mental health, social service, and education work synergistically, instead of at odds with one another. All participants in the juvenile justice system must appreciate the value of fostering positive child development and realize that some current practices can be harmful. Defense attorneys must understand that effective treatment for a child is not synonymous with punishment. In turn, prosecutors and probation officers must understand that effective intervention enhances public safety. Judges need to appreciate the enormous impact they can have if they encourage cooperative, working relationships among all members of the juvenile court system.

In spite of very significant advances in understanding juvenile delinquency, developmental traumatology, neurobiology, and social learning psychology, there is a palpable dearth of information being transmitted to

key players in the juvenile justice system. This is not an insoluble problem. At the very least, decision-makers can be educated about practices and interventions that have a developmental rationale or an evidence base and therefore have a reasonable chance of being successful. This would naturally lead to the elimination of ineffectual practices, which also frequently present unacceptable risks to normative child development and socialization.

NOTES

1. For psychological and neurobiological references and studies linking the origins of consciousness and morality in children to a nurturing environment, see STANLEY I. GREENSPAN & NANCY BRESLAU LEWIS, *BUILDING HEALTHY MINDS: THE SIX EXPERIENCES THAT CREATE INTELLIGENCE AND EMOTIONAL GROWTH IN BABIES AND YOUNG CHILDREN* 85–129 (Perseus 1999); STANLEY I. GREENSPAN & BERYL LIEFF BENDERLY, *THE GROWTH OF THE MIND AND THE ENDANGERED ORIGINS OF INTELLIGENCE* 110–32 (Perseus 1997); ADRIAN RAINE, *THE PSYCHOPATHOLOGY OF CRIME: CRIMINAL BEHAVIOR AS A CLINICAL DISORDER* (Academic Press 1997); David E. Arredondo & Leonard P. Edwards, *Attachment, Bonding, and Reciprocal Connectedness: Limitations of Attachment Theory in the Juvenile and Family Court*, 2 J. CTR. FOR FAM. CHILD. & CTS. 109 (2000); Harry F. Harlow, *Mice, Monkeys, Men, and Motives*, 60 PSYCHOL. REV. 23 (1953); Bruce D. Perry, *Bonding and Attachment in Maltreated Children: Consequences of Emotional Neglect in Childhood*, 4 CHILD TRAUMA ACAD. PARENT & CAREGIVER EDUC. SERIES (2001), www.childtrauma.org/ctamaterials/AttCar4_03_v2.pdf. Neurobiological studies of nonhuman mammals also show the necessity of an attentive and predictably nourishing environment for normal brain development. See David H. Hubel & Torsten N. Wiesel, *Receptive Fields and Functional Architecture in Two Non-striate Visual Areas (18 and 19) of the Cat*, 28 J. NEUROPHYSIOLOGY 229 (1965); Anita M. Turner & William T. Greenough, *Differential Rearing Effects on Rat Visual Cortex Synapses: I. Synaptic and Neuronal Density and Synapses per Neuron*, 329 BRAIN RES. 195 (1985).

2. For example, the perception of gross unfairness or indifference can further alienate children or cause them to lose respect for the social system that the court represents. As any parent can testify, children and adolescents are

preoccupied with the concept of “fairness,” and perceived or real lack of fairness can lead to increased negative behavior.

3. See, e.g., FORUM ON ADOLESCENCE, NAT’L RESEARCH COUNCIL & INST. OF MED., *ADOLESCENT DEVELOPMENT AND THE BIOLOGY OF PUBERTY 1* (Michael D. Kipke ed., Nat’l Acads. Press 1999), <http://books.nap.edu/books/0309065828/html/1.html#pagetop>; Laurence Steinberg & Elizabeth Cauffman, *A Developmental Perspective on Jurisdictional Boundary*, in *THE CHANGING BORDERS OF JUVENILE JUSTICE: TRANSFER OF ADOLESCENTS TO THE CRIMINAL COURT* 379 (Jeffrey Fagan & Franklin E. Zimring eds., Univ. of Chicago Press 2000).

4. According to Erik Erikson, “In their search for a new sense of continuity and sameness, adolescents have to refight many of the battles of earlier years, even though to do so they must artificially appoint perfectly well-meaning people to play the roles of adversaries; and they are ever ready to install lasting idols and ideals as guardians of a final identity.” ERIK H. ERIKSON, *CHILDHOOD AND SOCIETY* 261 (W.W. Norton 2d ed. 1963) (1955).

5. According to one panel of child psychologists, “Research conducted with both humans and nonhuman primates suggests that adolescence is a time for carrying out crucial developmental tasks: becoming physically and sexually mature; acquiring skills needed to carry out adult roles; gaining increased autonomy from parents; and realigning social ties with members of both the same and the opposite gender. Studies of such commonalities underscore the critical importance of this part of the life course in establishing social skills. For many social species, such skills are further developed through peer-oriented interactions that are distinct from both earlier child-adult patterns and later adult pairings.” FORUM ON ADOLESCENCE, *supra* note 3, at 1–2.

6. Laurence Steinberg & Robert G. Schwartz, *Developmental Psychology Goes to Court*, in *YOUTH ON TRIAL: A DEVELOPMENTAL PERSPECTIVE ON JUVENILE JUSTICE* 23 (Thomas Grisso & Robert G. Schwartz eds., Univ. of Chicago Press 2000). The authors continue: “[I]t is not an overstatement to say that it is much easier to alter an individual’s life course in adolescence than in adulthood.” *Id.*

7. For excellent collections on these important topics, see *YOUTH ON TRIAL*, *supra* note 6; *THE CHANGING BORDERS OF JUVENILE JUSTICE*, *supra* note 3.

8. “Transgenerationally involved” children are children whose adult family members have been involved in the justice system. The term includes children of parents,

NOTES

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grandparents, aunts, and uncles who have been arrested, incarcerated, or are currently incarcerated or on parole. It also includes adult relatives' involvement with the dependency court.

9. See, e.g., GREENSPAN & BENDERLY, *supra* note 1, at 264; DANIEL J. SIEGEL, *THE DEVELOPING MIND: TOWARD A NEUROBIOLOGY OF INTERPERSONAL EXPERIENCE* 1–22, 276–82 (Guilford Press 1999); Arredondo & Edwards, *supra* note 1, at 111–14; cf. David H. Hubel, *Effects of Distortion of Sensory Input on the Visual System of Kittens*, 10 *PHYSIOLOGIST* 17 (1967) (studying joint impact of environment and physiology on feline neurobiological development); Hubel & Wiesel, *supra* note 1 (same).

10. See, e.g., ALBERT BANDURA & RICHARD H. WALTERS, *SOCIAL LEARNING AND PERSONALITY DEVELOPMENT* (Holt, Rinehart & Winston 1963); JULIAN B. ROTTER, *SOCIAL LEARNING AND CLINICAL PSYCHOLOGY* (Prentice Hall 1954); Albert Bandura & Frederick J. McDonald, *The Influence of Social Reinforcement and the Behavior of Models in Shaping Children's Moral Judgments*, 67 *J. ABNORMAL & SOC. PSYCHOL.* 274 (1963); Robert Sears, *A Theoretical Framework for Personality and Social Behavior*, 6 *AM. PSYCHOLOGIST* 476 (1951).

11. See, e.g., RAINE, *supra* note 1; SIEGEL, *supra* note 9; Perry, *supra* note 1.

12. Virtually all evidence-based approaches to delinquency include intensive family involvement. Good examples of evidence-based practices include the “wraparound” approach used in Santa Clara County, California; the “multisystemic therapy” developed in rural South Carolina and Columbia, Missouri; and Treatment Foster Care and Functional Family Therapy promulgated in Oregon. Statistically and clinically meaningful studies have shown that evidence-based approaches are effective. As such, they can be described as effective in treating antisocial behaviors (juvenile delinquency) with a reasonable degree of certainty. Historically, most juvenile justice interventions derive their support from anecdotal evidence, which does not withstand the test of follow-up evaluation for effectiveness. Examples of these (non-evidence-based) practices include wilderness programs, shock incarceration, scared-straight programs, and boot camps. See PETER FONAGY ET AL., *WHAT WORKS FOR WHOM? A CRITICAL REVIEW OF TREATMENTS FOR CHILDREN AND ADOLESCENTS* 153–65 (Guilford Press 2002); RICHARD A. MENDEL, *LESS HYPE, MORE HELP: REDUCING JUVENILE CRIME, WHAT WORKS—AND WHAT DOESN'T* 10–11 (Am. Youth Policy Forum 2000) (describing Multisystemic Therapy and Functional Family Therapy); EMQ CHILDREN & FAMILY

SERVS., *PROGRAM UPLIFT, WRAPAROUND SERVICE REPORT 3* (2001) (describing the wraparound approach).

13. See PANEL ON JUVENILE CRIME: PREVENTION, TREATMENT & CONTROL, NAT'L RESEARCH COUNCIL & INST. OF MED., *JUVENILE CRIME, JUVENILE JUSTICE* 16 (Joan McCord et al. eds., Nat'l Acad. Press 2001), <http://books.nap.edu/books/0309068428/html/16.html>.

14. See GREENSPAN & BENDERLY, *supra* note 1, at 258–70 (describing effects of violence and deprivation on a young delinquent).

15. See *id.*

16. The irony of relying on the justice system to embody society's values in light of current resource allocation is not lost on the author.

17. It is painful to be deprived of human attention. This is why solitary confinement is used as punishment. There are psychological reasons why attention and reciprocal interaction are required to develop a normal human psyche. See IDRIES SHAH, *LEARNING HOW TO LEARN: PSYCHOLOGY AND SPIRITUALITY IN THE SUFI WAY* 85 (Harper & Row 1983) (“One of the keys to human behavior is the attention factor”); see also Arredondo & Edwards, *supra* note 1, at 111–14 (describing the necessity of reciprocal connectedness, beyond attachment and bonding, for normal brain and social development).

18. Attention-seeking behavior is also noted in infants. Upon casual observation in orphanages where infants are attention-deprived, a visitor will often be greeted with intense demands for attention.

19. This is not a minor problem among American youth. The U.S. Justice Department's Office of Juvenile Justice and Delinquency Prevention estimates that 17 to 23 percent of children from 6th grade and above have been bullied at least weekly. NELS ERICSON, *OJJDP FACT SHEET: ADDRESSING THE PROBLEM OF JUVENILE BULLYING* (June 2001), available at www.ncjrs.org/pdffiles1/ojjdp/fs200127.pdf.

20. See STEVEN M. COX & JOHN J. CONRAD, *JUVENILE JUSTICE: A GUIDE TO PRACTICE AND THEORY* 11 (McGraw-Hill 3d ed. 1991) (“The dispute between legalists and therapists remains unresolved after a century or more of debate”); BARRY KRISBERG & JAMES F. AUSTIN, *REINVENTING JUVENILE JUSTICE* 109 (Sage Publ'ns 1993) (arguing that the juvenile justice system should be more attentive to social inequity); Barry Krisberg & James C. Howell, *The Impact of the Juvenile Justice System and Prospects for Graduated Sanctions in a Comprehensive Strategy*, in

SERIOUS AND VIOLENT JUVENILE OFFENDERS: RISK FACTORS AND SUCCESSFUL INTERVENTIONS 347 (Rolf Loeber & David P. Farrington eds., Sage Publ'ns 1998) (arguing same as applied to serious juvenile offenders).

21. PANEL ON JUVENILE CRIME: PREVENTION, TREATMENT & CONTROL, *supra* note 13, at 78 ("Failure to set clear expectations for children's behavior, inconsistent discipline, excessively severe or aggressive discipline, and poor monitoring and supervision of children predict later delinquency").

22. The issue of "potential harm done" is rarely part of a discussion on choosing between sanctioning alternatives. This is especially problematic in the context of child development. Failures during critical windows of this development can have lifelong consequences because of the profound impact of early experience on a child's worldview. For example, a child who is subjected to a callous environment for a significant duration of time is likely to make generalizations about the rest of the world (i.e., that it is also fundamentally, if not overtly, callous). The principle of *primum non nocere* (first do no harm) is especially important when dealing with children for many reasons, including the enduring impact of childhood experience.

23. A popular and well-grounded conceptualization of the purpose of juvenile probation is termed the "Balanced Approach" or "Balanced and Restorative Justice." This thoughtful and developmentally sound approach dictates that three goals—community safety, accountability, and competence development—steer decision making. This model does not, however, *explicitly* address the issues of deterrence, societal desire for unadulterated retribution, or the notion of "harm done" by current practices. For a good review of this model approach, see Dennis Maloney et al., *Juvenile Probation: The Balanced Approach*, 39 JUV. & FAM. CT. J. 1–11 (1988).

24. The *American Heritage Dictionary of the English Language* defines *rehabilitate* as "1. To restore to good health or useful life, as through therapy and education. 2. To restore to good condition, operation, or capacity. 3. To reinstate the good name of. 4. To restore the former rank, privileges, or rights of." AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1471 (Houghton Mifflin 4th ed. 2000).

25. In practice, the use of the term *rehabilitation* is often portrayed as an alternative to punishment or accountability-based sanctioning. This portrayal leads to an unfortunate dichotomization, which further muddles clear thinking on desired outcomes and the purpose of the delinquency court.

26. BLACK'S LAW DICTIONARY 1290 (West Group 7th ed. 1999). NOTES

27. AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS—TEXT REVISION (DSM-IV-TR) 704 (4th ed. 2000) ("By definition, Anti-social Personality cannot be diagnosed before age 18").

28. See MENDEL, *supra* note 12, at 59.

29. See Richard E. Behrman, *The Juvenile Court: Statement of Purpose*, 6 FUTURE CHILD. 33 (1996) (noting the need for prosecutors and defenders to understand social services).

30. This definition helps clarify what, in addition to public safety and victim rights, should be the proper objectives of the delinquency court. It also creates a framework for developing meaningful outcome measures that are quantifiable yet not limited to detected recidivism per se.

31. PATRICIA CHAMBERLAIN, FAMILY CONNECTIONS: A TREATMENT FOSTER CARE MODEL FOR ADOLESCENTS WITH DELINQUENCY 30 (Northwest Media 2d ed. 1998).

32. Physiological tolerance to medication may provide a useful analogy. The dose and duration of administration are critical to the effectiveness of medication. Administration of too much medication for too long can lead to a marked reduction in the medication's effectiveness or to undesirable side effects.

33. Less frequent rotation of judges is highly desirable for many other reasons, not the least of which is the relative lack of experience engendered by a one- to two-year juvenile rotation. Longer rotations or permanent assignments would allow an interested judge to acquire the training and cultivate the experience necessary for wisdom on the bench.

34. Moreover, there is little information regarding evaluation of the efficacy of detention. According to one critique, "No responsible business concern would operate with as little information regarding its success or failure as do nearly all of our delinquency-prevention and control programs. It is almost possible to count on one hand the number of true experiments in which alternative techniques are compared; the number of systematic, though nonexperimental, evaluations is not a great deal larger. We spend millions of dollars a year in preventive and corrective efforts, with little other than guesswork to tell us whether we are getting the desired effects." William E. Wright & Michael C. Dixon, *Community Prevention and Treatment of Juvenile Delinquency: A Review of Evaluation Studies*, 14 J. RES. CRIME & DELINQ. 35, 55 (1977)

- NOTES (citing Wheeler S. Cottrell et al., *Juvenile Delinquency: Its Prevention and Control*, in DELINQUENCY AND SOCIAL POLICY 428, 440 (Paul Lerman ed., Praeger 1970)).
35. I am indebted to Kurt Kumli, supervising district attorney of the Santa Clara County Delinquency Court, and Judge Leonard Edwards for this observation.
36. FONAGY ET AL., *supra* note 12.
37. See MENDEL, *supra* note 12, at 17–20; Lawrence W. Sherman et al., *Preventing Crime: What Works, What Doesn't, What's Promising*, NAT'L INST. OF JUSTICE, RES. IN BRIEF 1–13 (July 1998) (summarizing findings of 1997 report to Congress with same title); Carol Sheldrick, *Treatment of Delinquents*, in CHILD AND ADOLESCENT PSYCHIATRY 968 (Michael Rutter et al. eds., Blackwell 3d ed. 1994).
38. Wright & Dixon, *supra* note 34, at 53 (“Empey and Lubeck ... and Empey and Erickson ... reported that, after one- and four-year follow-ups, those youths who had been incarcerated committed more serious crimes when they were returned to their communities than did the youths who had been in the community treatment program”).
39. I am indebted to Kurt Kumli for this observation.
40. See *infra* text accompanying notes 46–64.
41. I am indebted to Kurt Kumli for this example.
42. Fostering such an understanding is the cornerstone of the Balanced and Restorative Justice approach. See *supra* note 23 and accompanying text.
43. Of course, many of the children in the delinquency system have also themselves been victims. Indeed, W.H. Auden reminds us:
- I and the public know
What all schoolchildren learn,
Those to whom evil is done
Do evil in return.
- W.H. AUDEN, *September 1, 1939*, in THE ENGLISH AUDEN: POEMS, ESSAYS, AND DRAMATIC WRITINGS, 1927–1939, at 245 (Edward Mendelson ed., Faber & Faber 1977).
44. FORUM ON ADOLESCENCE, *supra* note 3, at 18. “Indicators of pubertal growth have been observed as early as age 7. These findings suggest that as children experience puberty and other developmental changes at earlier ages, there may be the need to consider how to design and deliver age-appropriate interventions during the middle childhood and preteen years to help them avoid harmful or risky behaviors and develop a health-promoting lifestyle.” *Id.*; see also Julia A. Graber et al., *Is Psychopathology Associated With the Timing of Pubertal Development?*, 36 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 1768 (1997).
45. Daniel J. Flannery et al., *Impact of Pubertal Status, Timing, and Age on Adolescent Sexual Experience and Delinquency*, 8 J. ADOLESCENT RES. 21 (1993), quoted in FORUM ON ADOLESCENCE, *supra* note 3, at 20.
46. HOWARD N. SNYDER & MELISSA SICKMUND, NAT'L CTR. FOR JUVENILE JUSTICE, JUVENILE OFFENDERS AND VICTIMS: 1999 NATIONAL REPORT (Sept. 1999), available at www.ncjrs.org/html/ojjdp/nationalreport99/toc.html.
47. OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, OJJDP STATISTICAL BRIEFING BOOK (Jan. 2002), at ojjdp.ncjrs.org/ojstatbb/html/qa253.html.
48. See, e.g., Cathy Spatz Widom, *Child Abuse, Neglect, and Violent Criminal Behavior*, 27 CRIMINOLOGY 251 (1989).
49. See MEDA CHESNEY-LIND, THE FEMALE OFFENDER: GIRLS, WOMEN, AND CRIME (Sage Publ'ns 1997); see also LESLIE ACOCA & JAMES AUSTIN, THE CRISIS: WOMEN IN PRISON (Nat'l Council on Crime & Delinquency 1996); FAEDRA LAZAR WEISS ET AL., PREVENTION AND PARITY: GIRLS IN JUVENILE JUSTICE (Girls Inc. 1996).
50. Delinquent girls report serious mental health problems, including depression and anxiety, and suicidal thoughts. A 1994 study of delinquent girls revealed that half of those surveyed had considered suicide, and some 64 percent of these girls had thought about it more than once. PANEL ON JUVENILE CRIME: PREVENTION, TREATMENT & CONTROL, *supra* note 13, at 102. See also FRED A. ADLER, SISTERS IN CRIME: THE RISE OF THE NEW FEMALE CRIMINAL (McGraw-Hill 1975); Leslie Acoca, *Outside/Inside: The Violation of American Girls at Home, on the Streets, and in the Juvenile Justice System*, 44 CRIME & DELINQ. 561 (1998).
51. See, e.g., CAROL GILLIGAN, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT (Harvard Univ. Press 1982); Peggy C. Giordano et al., *Delinquency, Identity, and Women's Involvement in Relationship Violence*, 37 CRIMINOLOGY 17 (1999).
52. See, e.g., Kimberly Kempf-Leonard & Lisa L. Sample, *Disparity Based on Sex: Is Gender-Specific Treatment Warranted?*, 17 JUST. Q. 89 (2000).
53. PANEL ON JUVENILE CRIME: PREVENTION, TREATMENT & CONTROL, *supra* note 13, at 57–58. Leslie Acoca and Myrna S. Raeder argue that “[t]he process of disproportionately penalizing and detaining girls for status offenses and subsequent violations of valid court orders must

be halted. Instead, effective diversion and intervention options that specifically address girls' needs and engage their families and caretakers should be developed at the community level. Family focused programs that intervene upon family violence, including domestic combat between rebellious girls and their caretakers, should also be implemented at the community level. Further, training that provides accurate and current information on the characteristics and needs of girl offenders and their families and on dispositional alternatives for this population should be immediately delivered to law enforcement, probation officers, juvenile and family court judges, and child welfare professionals." Leslie Acoca & Myrna S. Raeder, *Severing Family Ties: The Plight of Nonviolent Female Offenders and Their Children*, 11 STAN. L. & POL'Y REV. 133, 143 (1999).

54. The vast majority of female detainees have been the victims of sexual or physical abuse. FED. BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, CRIME IN THE UNITED STATES 1998 (1999); see also ACOCA & AUSTIN, *supra* note 49; WEISS ET AL., *supra* note 49; Leslie Acoca, *Investing in Girls: A 21st Century Strategy*, 6 JUV. JUST. 3 (1999); Giordano et al., *supra* note 51.

55. I am indebted to Judge Eugene Hyman of the Superior Court of California, County of Santa Clara, who shared his experience working with a specialized juvenile cohort of domestic and family violence cases.

56. WEISS ET AL., *supra* note 49, at 14–15.

57. Many times victims of sexual abuse (especially chronic abuse) are ambivalent about the perpetrator. Sometimes they are also fearful. It is the common experience of psychotherapists that getting the "whole story" is often difficult because of complex feelings of shame, fear, guilt, and ambivalence.

58. This is an extremely common clinical profile seen by therapists who work with sexually traumatized girls at high risk.

59. FORUM ON ADOLESCENCE, *supra* note 3, at 10 (citations omitted).

60. PANEL ON JUVENILE CRIME: PREVENTION, TREATMENT & CONTROL, *supra* note 13, at 101. In general, women suffer from depression and other mood disorders at rates considerably higher than men, who are more likely to resort to substance abuse to control their moods.

61. AM. PSYCHIATRIC ASS'N, *supra* note 27, at 356; Richard Harrington, *Affective Disorders*, in CHILD AND

ADOLESCENT PSYCHIATRY: MODERN APPROACHES 330–43 (Michael Rutter et al. eds., Blackwell 3d ed. 1994).

62. Females often (and more than males) present internalizing disorders, such as anxiety, depression, and eating disorders. Girls may direct pain, anger, self-loathing, and frustration inward as a reaction to sexual, emotional, and physical abuse. This internalization can lead to self-destructive behavior, such as extreme promiscuity, prostitution, and placing themselves in harm's way. See PANEL ON JUVENILE CRIME: PREVENTION, TREATMENT & CONTROL, *supra* note 13, at 101.

63. See OFFICE OF JUVENILE JUSTICE & DELINQUENCY PROGRAMS, U.S. DEP'T OF JUSTICE, GUIDING PRINCIPLES FOR PROMISING FEMALE PROGRAMMING: AN INVENTORY OF BEST PRACTICES (1998), available at www.ojjdp.ncjrs.org/pubs/principles/contents.html.

64. For example, different cultures have different attitudes toward sexual precocity and sexual behavior, including early pregnancy and child rearing. Early puberty poses fewer problems for girls in cultures whose adult women tend to support early maturation. For example, there is limited research suggesting that black girls cope better with early maturation than their white peers. FORUM ON ADOLESCENCE, *supra* note 3, at 29.

65. See, e.g., NAT'L CTR. FOR JUVENILE JUSTICE, DESKTOP GUIDE TO GOOD JUVENILE PROBATION PRACTICE 113 (2002), available at <http://ncjj.servehttp.com/NCJJWebsite/pdf/Chapter11.pdf> (noting that "many observers ... feel that, for fiscal and other reasons, the juvenile justice system has become a kind of dumping ground for emotionally disturbed juveniles who have nowhere else to go"); Joseph J. Cocozza & Kathleen Skowrya, *Youth With Mental Health Disorders: Issues and Emerging Responses*, 7 JUV. JUST. J. 3 (2000); Richard E. Redding, Inst. of Law, Psychiatry & Pub. Policy, *Barriers to Meeting the Mental Health Needs of Offenders in the Juvenile Justice System*, JUVENILE JUSTICE FACT SHEET (Univ. of Va. 2000), available at www.ilppp.virginia.edu/Juvenile_Forensic_Fact_Sheets/BarrMeet.html; Fox Butterfield, *Concern Rising Over Use of Juvenile Prisons to "Warehouse" the Mentally Ill*, N.Y. TIMES, Dec. 5, 2000, at A16.

66. David E. Arredondo, Comm. on Mental Health, Med. & Legal Issues, Nat'l Council of Juvenile & Family Court Judges (2002) (unpublished manuscript, on file with author).

67. *Id.*

- NOTES
68. David E. Arredondo et al., *Juvenile Mental Health Court: Rationale and Protocols*, 52 JUV. & FAM. CT. J. 1, 3 (Fall 2001).
69. Hans Steiner & Erickson Cauffman, *PTSD Among Female Juvenile Offenders*, 37 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 11 (1998); David E. Arredondo, *Massachusetts Youth Screening Instrument—2* (2002) (unpublished manuscript, on file with author).
70. In the author's experience as a consultant to the Juvenile Mental Health Court in Santa Clara County, California, the prevalence of mild to moderate mental retardation approached 35 percent of youth referred. For a description of this court and its protocols, see Arredondo et al., *supra* note 68, at 8–17. Estimates by the Coalition for Juvenile Justice, a federally financed group appointed by the nation's governors, also suggest that 15 to 20 percent of teenagers suffer from a severe, biologically based mental illness. *Id.* at 4.
71. It is an inappropriate, though very common, practice to use juvenile detention facilities to warehouse mentally ill children. See NAT'L CTR. FOR JUVENILE JUSTICE, *supra* note 65; Butterfield, *supra* note 65.
72. Arredondo, *supra* note 66, at 3–4.
73. *Id.*
74. Screening is a quick check for symptoms that may suggest suicidal tendencies or major emotional disturbance. Diagnosis and assessment are more thorough and formal evaluations for the presence of mental illness.
75. Heidi M. Hsia & Donna Hamparian, *Disproportionate Minority Confinement: 1997 Update*, OJJDP JUV. JUST. BULL. 1 (Sept. 1998), available at www.ncjrs.org/pdffiles/170606.pdf.
76. Carl E. Pope & William Feyerherm, *Minorities and the Juvenile Justice System*, OJJDP RES. SUMMARY 2–3 (July 1995), available at www.ncjrs.org/pdffiles/minor.pdf.
77. In 1985, Caucasian youth between the ages of 10 and the upper age of juvenile court jurisdiction were detained at a rate of 45 per 100,000, while the rates for African-American and Hispanic youth of comparable age were 114 per 100,000 and 73 per 100,000, respectively. By 1995, detention rates for Caucasians had decreased 13 percent to 39 per 100,000. Rates for African Americans had increased 180 percent to 319 per 100,000; rates for Hispanics had increased 145 percent to 179 per 100,000. Madeline Wordes & Sharon M. Jones, *Trends in Juvenile Detention and Steps Toward Reform*, 44 CRIME & DELINQ.
- 544, 554–55 (1998) (citing U.S. Census Bureau annual one-day counts from 1985 to 1995).
78. RAINE, *supra* note 1, at 243–85.